



Final Decree Transition sub- Working Group discussion and recommendations

JUNE 16, 2022

Ongoing draft

This Strawman is a draft product of sub-group discussions and comments; it does not represent a final consensus recommendation for the Stakeholder Working Group. Areas that require further discussion are identified throughout.

The Court that issued the decree, needs to administer the decree

- Continue to call/use the Water Division Court
- The chief and associate water judges have been issuing final decrees under the exclusive jurisdiction of the Water Division Court. Calling them the Water Court is shorthand. In statute, the chief and associate water judges are Water Division Judges.
- Final Decree caption should note which Water Division Court

Jurisdiction/duties of the Water Division Court

Existing strawman:

- Adjudication (should be temporary; Adjudication over once there is a final decrees)
- Section 9: Conduct Judicial review DNRC permit and change decisions; PJR proceedings (2-4-702)
- Section 9: Water Distribution Controversies 85-2-406
- Section 9: Appointment management of Water Commissioners 85-5-101
- Section 9: Abandonment of water rights after final decree 85-2-234
- Section 9: Appointment of water masters to assist with cases

Jurisdiction/duties of the Water Division Court

Add to the strawman:

- Interpretation of final decrees and rule 60 (Insert into title 85)
- 85-5 part 3,
- Illegal water use
- Abandonment of permits, certificates- 85-2-405 (needs to tweak)
- Compact disputes- the Water Division Court may be a court of competent jurisdiction; clarify that if it is State Court, it is the Water Division Court

Jurisdiction/duties of the Water Division Court

- Decision: model after District Court: (3-5-302)
- Edit 3-7-101 by cross referencing duties above
- Need for all cross referenced, go to that section of statute and update with “Water Division Judge”

How to select Water Division Judges?

- Elected vs appointed: general vs exclusive jurisdiction (constitutional issue)
 - Identify this as a legal question that the LG needs to investigate to make further recommendations
- What is the pool? Discussed, no recommendation until above analysis:
 - Nominate a certain court to be the seat of the Water Division Court for that Water Division.
 - Selected by a committee from the pool of sitting District Court judges
 - General election for that Division
 - Appointment
 - Minimum requirements

Role of chief water judges

Discussed, no recommendation until general vs exclusive jurisdiction analysis

Substitution of judges in the Water Division Court

- Edit language on substitution: e.g., file with the Water Division Court and the petitioner may request the transfer of case to a District Court judge within that Division (during the transition), or the division water judge can transfer; long-term: substitute with judges within the Water Division.

Funding for judges

- Maintain the same funding mechanism; would need to lobby to have the funding continue to post final decree